

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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MATTIEU BURKS,

Plaintiff,

-against-

CORRECTION OFFICER CHAD STICKNEY;
CORRECTION OFFICER NOLAN; CORRECTION
OFFICER SMITH; CORRECTION OFFICER EDWARD
L. PEPPER; SERGEANT JOHN MARK. CROSS;
CORRECTION OFFICER DAVID J. CHAMBERLAIN;
CORRECTION OFFICER JOSHUA R. WOOD; JOHN
DOE "E" BLOCK SERGEANT; SUPERINTENDENT
STEVEN RACETTE, SUPERINTENDENT MICHAEL
KIRKPATRICK, JOHN DOE SUPERVISOR IN
CHARGE OF SECURITY #1, JOHN DOE
CORRECTION OFFICERS ##1-25,

Defendants.

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DECLARATION IN SUPPORT
OF PLAINTIFF'S MOTION
FOR SANCTIONS PURSUANT
TO RULE 37 AND THE
INHERENT POWER OF THE
COURT

Docket No. 16cv759
(FJS)(DEP)

ECF CASE

Stoll, Glickman & Bellina, LLP
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LEO GLICKMAN declares the following, pursuant to 28 U.S.C. § 1746:

1. I am the attorney for the plaintiff in the above captioned action. As such, I am familiar with the facts stated below and submit this declaration to place the relevant documents on the record in support of his motion for sanctions.
2. The Declarant keeps contemporaneous in office time records using the Amicus Attorney law firm management system, which provides for contemporaneous timekeeping. All time sheets provided pursuant to the below were created on that system.
3. The declarant is a founding partner of Stoll, Glickman & Bellina, LLP (“SGB”). SGB primary practice area (around 90%) is civil rights. SGB was founded in 2004. Declarant has been awarded \$450 per hour in Rule 68 offers and the like for work in the Southern and Eastern District of New York. Nick Mindicino is an SGB associate who has practiced at the firm for six years. He has practiced exclusively in civil rights. He has obtained \$350 per hour in Rule 68 offers in the Southern and Eastern Districts of New York.
4. In each instance Declarant attempted to mitigate the costs for the court reporters and hotel rooms. The court reporter did so for the July 25 deposition cancelled by defendant Kirkpatrick.

Section 1 of the Memorandum of Law

5. Exhibit “A” is one of the seven Notices of Deposition served on defendants by the Declarant on May 19, 2017.
6. Exhibit “B” is the email exchange between Declarant and defendants’ counsel regarding defendants refusal to appear anywhere except Clinton C.F. for their depositions.
7. Exhibit “C” is the relevant time sheet showing the amount of time Declarant spent on responding to the defendants’ demand to be deposed in Clinton C.F.

Section 2

8. Exhibit “D” is the email exchange between Declarant and defendants’ counsel showing plaintiff’s request to review photographs of C Block officers who worked the 11-7 shift on July 5-6, 2015 and defendants continued “objection”.

9. Exhibit “E” is defendants’ counsel email sent at 7:06 PM on June 13 in which she imposes new and unreasonable terms on the photographic viewing scheduled for July 15.

10. Exhibit “F” is defendants’ email to Declarant on June 14 stating that State officials would be conducting a photographic array pertaining to the July 5, 2015 assault with or without plaintiff’s counsel present and Declarant’s reply that plaintiff was seeking court intervention to prevent them from doing so.

11. Exhibit “G” is Declarant’s and his associate Nick Mindicino’s times sheets to prepare the Order to Show Cause to enjoin the Attorney General’s office from conducting a photo array without counsel present.

12. Exhibit “H” is the paid invoice for the Queensbury Hotel in Glens Falls for the night of July 14 prior to the scheduled photo viewing at Great Meadow C.F.

Section 3

13. Exhibit “I” is the invoice for the deposition of Darwin Nolan.

14. Exhibit “J” is the time sheets in connection with the preparation and conduct of the deposition of Darwin Nolan.

Section 4

15. Exhibit “K” is the invoice for the hotel room for the night of July 24 before the deposition.

16. Exhibit “L” is the invoice for the court reporter cancellation for September 22 failure to

appear.

17. Exhibit “M” is the invoice for the hotel room for the night of September 21.

18. Exhibit “N” are the time sheets for the deposition preparation for Kirkpatrick. The total in the memorandum of law is divided by 2.

Section 5


19. Exhibit “P” is the email exchange between Declarant and defendants’ counsel regarding the scheduling of Superintendent Racette.

Conclusion

20. Exhibit “O” are time sheets in connection with the drafting of this motion.

EXECUTED ON: October 17, 2017
 Brooklyn, New York

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